



# Role of the Mental Health Review Tribunal: information for victims

## The Queensland forensic mental health system

Queensland has a unique legal system for responding to persons with a mental illness or intellectual disability who have committed a serious offence.

A specialised Mental Health Court has been established to determine whether a person with a mental illness or intellectual disability is of “unsound mind” or “unfit for trial” in relation to a criminal offence. Where this is the case, the person is not considered to be criminally responsible for the offence and is diverted from the criminal justice system. Instead, the person may be placed on a **forensic order** or a **treatment support order** for treatment or care, and for management of their risks to the community. The person may be on such an order in the community or in an inpatient mental health or forensic disability facility. The person on such an order is known as a “forensic patient” or “patient”.

Once a forensic order or treatment order is made, a specialist tribunal, the Mental Health Review Tribunal has responsibility for ongoing reviews of forensic orders and treatment support orders.

## The Mental Health Review Tribunal

The Mental Health Review Tribunal (the Tribunal) has responsibility for regularly reviewing all forensic and treatment support orders, determining when an order ends, the category of the order (“inpatient” or “community”) and for determining conditions that should be attached to the order.

The Tribunal does not manage a person’s treatment and care. That is the responsibility of the mental health service or forensic disability service.

For each forensic order or treatment support order review the Tribunal has 3 to 5 Tribunal members, but always includes a legal member, a psychiatrist member and a community member.

A Tribunal review, also known as a Tribunal hearing, must be held every 6 months or whenever the patient (or interested person on their behalf), the Attorney-General, the Chief Psychiatrist or the



Director of the Forensic Disability applies for a review. The Tribunal may also initiate a review at any time, for example, to enable further information or reports to be obtained.

## Tribunal reviews of forensic orders and treatment support orders

The *Mental Health Act 2016* sets out the considerations the Tribunal **must** take into account in reviewing a forensic order or treatment support order.

The Tribunal **MUST** confirm a forensic order or treatment support order if it considers it necessary, because of the person's mental condition, to protect the safety of the community. The Tribunal may hear evidence from the patient, the treating team or other experts about the person's treatment, their level of ongoing risk and the mental health service's plans to manage the risk.

In the case of a forensic order, the Tribunal may only make the order "community" category if satisfied there is not an unacceptable risk to the safety of the community.

The Tribunal may also impose or remove a condition on the order. Examples of conditions include that:

- the person must not initiate contact with a victim (or others)
- the person must not use illicit drugs or alcohol and must comply with testing for these
- the person must not have unsupervised contact with children under the age of 18.
- the person must not drive a motor vehicle without the permission of the treating psychiatrist.

Decisions about conditions are based on evidence about risk and relevance. For example, if illicit drug use was a factor in the original offence, this would be highly relevant to the Tribunal. If drugs or alcohol use have not been a feature of the person's history, or there is evidence of long-term abstinence, the Tribunal may not consider these conditions relevant to ensuring the safety of the community. In all its decisions, the Tribunal must also consider the rights and principles set out under the Queensland Human Rights Act.

The *Mental Health Act 2016* also requires that the Tribunal **MUST** consider:

- The patient's "relevant circumstances" that is, their mental state and psychiatric history, any intellectual disability, their social circumstances and response to treatment and care, as well as their willingness to receive appropriate treatment and care and their response to any previous treatment in the community.
- The nature of the offence and the time that has passed since.
- Any victim impact statement; and
- Any recommendations made by the Mental Health Court.



## “Prescribed offences”

An additional safeguard is in place for prescribed offences (the most serious offences). In these cases, the Tribunal must not revoke the order without an assessment and report from an independent forensic, mental health or disability specialist.

## Who can attend a Tribunal hearing?

Under the *Mental Health Act 2016*, Tribunal hearings are not open to the public and proceedings are confidential. Generally, attendees will include:

- The patient and their legal representative, advocate or support person.
- The treating team (psychiatrist, case manager or forensic liaison officer) who attend to give evidence about the person’s progress, treatment and risk issues.
- The Attorney-General’s representative who has a right to attend all forensic order hearings and to make submissions on behalf of the community.

The Tribunal may also require the attendance of a particular person to give evidence.

## Victim support and participation in Tribunal hearings

The *Mental Health Act 2016* supports victims of crime by providing that victims are entitled to provide a written submission (a victim impact statement) to the Mental Health Court or the Mental Health Review Tribunal and to receive information about the time and date of a relevant hearing and about the Tribunal decision relevant to a victim’s safety and well-being (through an information notice).

The Queensland Health Victim Support Service (QHVSS) has been established to assist victims to navigate the forensic mental health system. The QHVSS is a free, state-wide service that provides specialised counselling, information and support to victims of crime where the person accused of the crime is on a forensic order or treatment support order.

## Principles related to victims

The *Mental Health Act 2016* sets out the principles that the Tribunal must consider in relation to victims. These principles include that the physical, psychological and emotional harm to victims must be recognised with compassion. Further, the benefit of giving victims the opportunity to express their views about the impact of the offence, and for victims to be advised about decisions about the person’s treatment in the community must be recognised.



## Victim Impact Statements

Victims are encouraged to participate in Tribunal reviews through providing a victim impact statement. Any victim impact statement provided to the Mental Health Court will subsequently be provided to the Tribunal. Victims may also provide a victim impact statement directly to the Tribunal.

A victim impact statement enables a victim to express the impact of a crime and to request specific conditions such as a non-contact condition to be imposed. The Tribunal is obliged to consider any victim impact state at each hearing.

Victims are not obliged to update their victim impact statement for each hearing and the Tribunal acknowledges that for many victims revisiting the events of what occurred will be distressing. However, where the Tribunal is considering significant change to an order (such as the removal of conditions, extending leave, change of category from inpatient to community or revocation of an order) the views of a victim, through an updated victim impact statement, can be highly relevant to the decision. An updated victim impact statement will inform the Tribunal about any emerging or ongoing issues that are significant for the victim or of any changed circumstances., For example, if a victim has moved, a geographical exclusion or condition prohibiting the patient from visiting a shopping centre may no longer be relevant.

The Tribunal is rarely aware before the hearing that the treating team, or a forensic patient, is requesting a change to the order or to conditions (or a revocation of the order) so advance notice cannot be provided to the QHVSS or to victims so victims are encouraged to maintain contact with the QHVSS and to consider updating their victim impact statement so their concerns can continue to be considered by the Tribunal.

Victim impacts statements are confidential and will not be provided to the patient except on occasion where the victim requests that it be given to the person and the Tribunal authorises it.

## Information Notices

It is through an “information notice” that a victim can be provided with information about the timing of a hearing and the Tribunal’s decision concerning a particular patient. If a victim wishes to have an information notice, they should apply to the Chief Psychiatrist, via the appropriate form, through the QHVSS.

Where the Tribunal extends treatment in the community (for example, allows an increase in community leave) and an information notice is in place, the Tribunal will provide information to



assist victims to understand the rationale for the decision. The QHVSS supports victims to receive this information.

It is important that victims advise the QHVSS of any changes to contact details so it can advise you of the outcomes of a Tribunal hearing.

The Tribunal is not permitted to disclose details about the patient's address, treatment details or other personal details. The existence of an information notice and the name of any person who has requested it is confidential and will not be disclosed to a patient except in very limited circumstances and only when a victim requests that such information be provided to the patient.

## Further Information

For further information about the role of the Tribunal, the Tribunal's Policy Officer can assist. They can be contacted at [PolicyOfficer@mhrt.qld.gov.au](mailto:PolicyOfficer@mhrt.qld.gov.au) or telephone 07 3338 8300. Further information about the Tribunal can also be found at [www.mhrt.qld.gov.au](http://www.mhrt.qld.gov.au)

Further information about the Queensland Health Victim Support Service can be found at [Queensland Health Victim Support Service | Queensland Health](https://www.health.qld.gov.au/victim-support) . QHVSS can be contacted at [victim.support@health.qld.gov.au](mailto:victim.support@health.qld.gov.au) or phone (free call) 1800 208 005

The Office of the Chief Psychiatrist has also produced factsheets including in relation to Victim Impact Statements and Information Notices. Further details can be found at [Victim Support | Queensland Health](https://www.health.qld.gov.au/victim-support)